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## **European Tax Practice**

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# EUROPEAN TAX PRACTICE

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**Abstract.** The cultural diversity of the European Union reflects somehow on the tax system used by each country. To European level, the way of approaching the tax system has known two approaching plans: *European continental approach*, according to which the tax drawings are made up of taxations and contributions, existing conceptual differences at the level of content; *Anglo-Saxon approach*, according to which the tax drawings are made up of all the elements of tax nature, named “taxes”, their role being to ensure most of the incomes of the public budgets, without differences at the level of content. In this item we tried to make a short synthesis of the tax characteristic used within the EU and to surprise the main efforts made in order to unify the tax language.

**Key words:** direct taxes, indirect taxes, social contributions, tax system.

Initially thought to answer some pure financial objectives of the state, to which it was subsequently added a series of economic – social objectives as a result of the human society evolution, the tax system, defined as “the whole of compulsory money drawings done by the public administrations with definite title and without immediate or direct countertrade”<sup>1</sup>, is the result of thought, decision and action of the human factor, “expression of the politic will of an organized human community, positioned on a determined territory and having enough autonomy ...”<sup>2</sup>.

To European level, the way of approaching the tax system has known two approaching plans:<sup>3</sup>

*I. European continental approach*, according to which the tax drawings are made up of taxations and contributions, existing conceptual differences at the level of content.

*II. Anglo-Saxon approach*, according to which the tax drawings are made up of all the elements of tax nature, named “taxes”, their role being to ensure most of the incomes of the public budgets, without differences at the level of content.

The difference between the two types of approaches is based on the fact that from the Anglo-Saxon perspective, within fiscality, respectively tax system, only the non-refundable state drawings with compulsory title and without direct consideration on its side are included, while in the European continental system, the Anglo-Saxon way of approach has equivalent only in taxes.

Next to taxes, in the continental system, charges are includes (the amount of money paid by a physical or legal person, for a service provided by the state or is

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<sup>1</sup> Jessua C, Labrousse Ch, Vitry D., *Dicționar de științe economice*, Arc Publishing house, Bucharest, 2006, pp. 389.

<sup>2</sup> Gest G, Tixier G, *Droit fiscal international*, PUF, Paris, 1990, p.15, quoted by de N.Hoanță, *Economie și finanțe publice*, Polirom Publishing house, Iași, 2000, pp. 169.

<sup>3</sup> Bufan R, Castagnede B, Safta A, Mutascu M, *Tratat de drept fiscal. Partea generală*, vol. I, Lumina Lex Publishing house, Bucharest, 2005, pp. 309.

institutions<sup>4</sup>) and the contributions (transfer of value compulsory to the disposal of the state, without equivalent with permanent title and strictly determined destination<sup>5</sup>).

No matter the approach, at the level of a country, the social taxes and contributions are very important. At the level of the European Union, in order to ensure a better comparability between the tax systems of the member states, in 1995 The European System of Accounts was founded – ESA95.

By means of ESA95, one tried to bring at a common denominator the classification of the national accounts, and within them, the taxes and contributions in the European Union. The classification of the taxes and contributions according to ESA95 is shown in table nr.1.

**Table 1 ESA95 Classification of the social taxes and contributions**

<b>D2</b>	<b>Taxes on production and imports, receivable</b>
D21	Taxes on products
D211	Value added type taxes (VAT)
D211E	VAT paid to the EU
D212	Taxes and duties on imports excluding VAT
D2121	Import duties
D2122	Taxes on imports, excluding VAT and import duties
D2122A	Levies on imported agricultural products
D2122B	Monetary compensatory amounts on imports
D2122C	Excise duties
D2122D	General sales taxes
D2122E	Taxes on specific services
D2122F	Profits of import monopolies
D214	Taxes on products, except VAT and import taxes
D214A	Excise duties and consumption taxes
D214B	Stamp taxes
D214C	Taxes on financial and capital transactions
D214D	Car registration taxes
D214E	Taxes on entertainment
D214F	Taxes on lotteries, gambling and betting
D214G	Taxes on insurance premiums
D214H	Other taxes on specific services
D214I	General sales or turnover taxes
D214J	Profits of fiscal monopolies
D214K	Export duties and monetary comp. amounts on exports
D215	Other taxes on products n.e.c.
D21X31	Taxes less subsidies on products
D29	Other taxes on production
D29A	Taxes on land, buildings or other structures

<sup>4</sup> Matei G, Drăcea M, Drăcea R., *Finanțe publice*, Sitech, Craiova, 2005, pp. 148.

<sup>5</sup> Bufan R, Castagnede B, Safta A, Mutascu M, *Tratat de drept fiscal. Partea generală*, vol. I, Lumina Lex Publishing house, Bucharest, 2005, pp. 310.

D29B	Taxes on the use of fixed assets
D29C	Total wage bill and payroll taxes
D29D	Taxes on international transactions
D29E	Business and professional licences
D29F	Taxes on pollution
D29G	Under-compensation of VAT (flat rate system)
D29H	Other taxes on production n.e.c.
.....	
<b>D5</b>	<b>Current taxes on income and wealth</b>
D51	Taxes on income
D51A/D51M	Taxes on individual or household income excluding/including holding gains
D51B/D51O	Taxes on the income or profits of corporations excluding/including holding gains
D51C	Taxes on holding gains (D51C1; D51C2; D51C3)
D51D	Taxes on winnings from lottery or gambling
D51E	Other taxes on income n.e.c.
D59	Other current taxes
D59A	Current taxes on capital
D59B	Poll taxes
D59C	Expenditure taxes
D59D	Payments by households for licences
D59E	Taxes on international transactions
D59F	Other current taxes n.e.c.
.....	
D61	Social contributions
D611	Actual social contributions
D6111	Employers actual social contributions (secondary income account)
D61111	Compulsory Employers actual social contributions
<i>D61112(-)</i>	<i>Voluntary Employers actual social contributions</i>
D6112	Employees social contributions
D61121	Compulsory employees social contributions
<i>D61122(-)</i>	<i>Voluntary employees social contributions</i>
D6113	Social contributions by self- and non-employed persons
D61131	Compulsory social contributions by self- and non-employed persons
<i>D61132(-)</i>	<i>Voluntary social contributions by self- and non-employed persons</i>
<i>D612(-)</i>	<i>Imputed social contributions</i>
.....	
D91	Capital taxes
D91A	Taxes on capital transfers
D91B	Capital levies
D91C	Other capital taxes n.e.c.

(-) These categories are excluded from the total calculation of the taxes. *Source: ESA95 Key- Code Lists, Annex III, pp. 44-50 Transactions and Other Flow, 22 November Family 2005.*

From the analysis of this classification we can draw the following conclusion: at the level of the European Union the taxes classification makes the distinction between the production and the import duties, current income, property taxations, capital taxation, actual social contributions and imposed social contributions, in other words: indirect taxes, direct taxes and social contributions. According to ESA95, the tax classification is done this way<sup>6</sup>:

**Indirect taxes** are defined as the duties connected to production and imports (D2 category). These include VAT, import customs duties, excises and other taxes on specific services (transport, insurances etc.) and on the financial and capital transactions. Also, this category includes the production taxation (D29 category) defined as „taxes which appear as a result of carrying out a production activity”, such as: vocational licences, land and building taxes, salary taxes.

**Direct taxes** are the current income and property taxes (D5 category) to which capital taxes are added which include taxes such as donations and inheritance duties (D91 category). Income taxes (D51 category) include both the taxations of the physical persons' incomes and the legal persons' profit or income, as well as, capital gain taxations.

**Social contributions**, made up of two categories: actual social contributions and chargeable social contributions. The actual social contributions include the contributions to all the social insurance funds constituted and financed by the state. Chargeable social contributions include those contributions to the private insurances diagrams. In case of actual social contributions one makes the distinction between compulsory and voluntary contributions. The compulsory contributions are the ones imposed by law while the voluntary ones represent a saving form. Because of these characteristics in determining the tax pressure it is necessary to eliminate from calculation the voluntary actual social contributions and the chargeable social contributions, being an attribute of the coercive power of the state.

Thus, we can consider that the total level of drawings made by the state can be determined this way:

$$\begin{aligned}
 &\text{Production and import duties (D2)} \\
 &+ \text{Income and property current taxes (D5)} \\
 &+ \text{Capital taxation (D91)} \\
 &+ \text{Actual compulsory social contributions (D61111 + D61121 + D61131)} \\
 &= \text{Total taxes and social contributions paid to the state}
 \end{aligned}$$

### 1. Indirect taxes

Harmonization of the indirect taxes was one of the main objectives of the European Union in the fiscal area. Thus, art. 93 of the treaty for constituting the European community invites to the harmonizing the tax on the turnover, excises and other indirect taxes.

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<sup>6</sup> Moşteanu T., Cataramă D., Țătu L., Câmpeanu E., *Politici fiscale și bugetare europene*, Universitară Publishing house, 2005, pp. 44-45.

### **1.1. Value added tax**

Value added tax was introduced in the year 1970 in the European Economic Community by the directives 1 and 2. It replaced the different taxes on the production and consumption which made harder the commercial exchanges between the states. In the year 1977 by the sixth Directive<sup>7</sup> the harmonization of the value added tax in the member states is done. By means of this directive a common base is created in the member states for this tax. Also, this directive represents a true law for the VAT substantiation at communitarian level.

As a result of adopting the sixth directive, a work schedule was created with respect to eliminating the tax boundaries in the VAT area. The sixth directive was subsequently altered<sup>8</sup> for the purpose of eliminating the tax boundaries and adopting the VAT to the exigencies of a market without boundaries. The alterations established a transitory system of the VAT.

The elimination of the tax boundaries needed the harmonization of the taxation quotas of the value added tax<sup>9</sup>. According to the new provisions instituted by the 92/77/EEC directive, the member states may apply the following types of VAT quotas: normal taxes and one or two reduced taxes. It was established that the normal VAT tax shouldn't be smaller than 15%, and the reduced taxes shouldn't be smaller than 5%. The reduced taxes can apply for the products stipulated in the H Annex from the sixth directive. The increased VAT taxes are eliminated, but, in a transitory way: the zero tax or the much reduced tax (smaller than 5 %) is maintained. It was also established in case of some products (except for those included in Annex H<sup>10</sup> and for which on the 1<sup>st</sup> of January 1991 the reduced tax is applied) to be able to apply a reduced tax not smaller than 12% (parking tax).

The rates level of the value added tax in the European Union on 1<sup>st</sup> of January 2007 is shown in table no. 2.

Comparing to the European Union provisions, Romania observes the regulations regarding the taxation quota level: normal quota 19% and reduced quota 9%.

The taxation principle of the VAT at the level of the European Union is the one of the consumption (the destination of goods), in the sense that the value added tax is levied for the delivery of goods and the provision of services in the consumption state. Also the imports are subjected to the value added tax. This principle is regulated by the Romanian legislation, too<sup>11</sup>.

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<sup>7</sup> Council Directive 77/388/EEC from 17<sup>th</sup> of May 1977 on the harmonization of the laws of the Member States relating to turnover taxes.

<sup>8</sup> Council Directive 91/680/EEC from 16<sup>th</sup> December, supplementing the common system of value added tax and Directive 92/111/EEC from 14<sup>th</sup> December 1992, with respect to measures for simplifying the legislation in the VAT area.

<sup>9</sup> Council Directive 92/77/EEC from 19<sup>th</sup> October 1992.

<sup>10</sup> It is about H Annexe of the Council Directive 77/388/EEC, altered by the directive 92/77/EEC. Among the goods which can be the object of parking tax are: alive animals, cereals, plants, food products, (except alcoholic beverage, water distribution, Pharmacy products, medical equipments, transport of people and luggage, book deliveries etc.)

<sup>11</sup> See Law no. 571/2003 regarding the Tax Code with the subsequent alterations and completions.

**Table 2 List of VAT Rates Applied in the Member States**

Member States	Super Reduced Rate	Reduced Rate	Standard Rate	Parking Rate
Belgium	-	6	21	12
Bulgaria	-	7	20	-
Czech Republic	-	5	19	-
Denmark	-	-	25	-
Germany	-	7	19	-
Estonia	-	5	18	-
Greece	4,5	9	19	-
Spain	4	7	16	-
France	2,1	5,5	19,6	-
Ireland	4,4	13,5	21	13,5
Italy	4	10	20	-
Cyprus	-	5 / 8	15	-
Latvia	-	5	18	-
Lithuania	-	5 / 9	18	-
Luxembourg	3	6	15	12
Hungary	-	5	20	-
Malta	-	5	18	-
Netherlands	-	6	19	-
Austria	-	10	20	12
Poland	3	7	22	-
Portugalia	-	5 / 12	21	-
Romania	-	9	19	-
Slovenia	-	8,5	20	-
Slovakia	-	10	19	-
Finland	-	8 / 17	22	-
Sweden	-	6 / 12	25	-
United Kingdom	-	5	17,5	-

*Source: European Commission DOC/ 2108/ 2007 – VAT Rates Applied in the Member States of the European Community: Situation at 1<sup>st</sup> January 2007*

In July 1996, the Commission presented an acceleration program<sup>12</sup> of going from the transitory VAT regime to the definite common regime. A series of measures were established regarding the VAT scope, the taxation base, exonerations, territoriality etc... As a result of the reticence of the member states regarding the proposed measures and the way these can be approved, in 2000 it was decided the establishment of a long term strategy to focus on improving the functionality of the VAT system on a common market.

This strategy for the VAT<sup>13</sup> aims at simplifying, modernizing, applying more uniformly the existent rules and a better administrative cooperation. In the year 2003 a

<sup>12</sup> This program was carried out in five stages between 1996 and 1999.

<sup>13</sup> COM (2000)348.



balance sheet<sup>14</sup> was created with the achievements of the action plan proposed in 2000 which provisioned the following:

- after 1<sup>st</sup> of January 2003, cancellation of the possibility of the member states to impose to the intra-communitarian operators the obligation of assigning a tax representative for the operations made in other member states than in the ones where they lived;
- after 1<sup>st</sup> of January 2003 all the tax payers (resident or non-resident) have the right to hand in the VAT statements in electronic form;
- the legal framework for the electronic invoicing and the electronic storage of the invoices;
- making a proposal for the uniformization of the reduced VAT quota and scope, etc.;

For a good operation of the VAT at the European Union level, the creation of a common system for information exchange between member states was needed. This system was necessary mainly for the situation where the supplier of goods is in another state than the consumer of goods<sup>15</sup>. Thus, each member state must create a central department, the only purpose of which should be the contact with the other member states and the information exchange between them.

For the information exchange to be efficient, each member state must have an electronic database which will include information kept for at least five years since the date of the conclusion of the financial year in which the events took place.

## **1.2. Excise duties**

The communitarian regulations<sup>16</sup> in the field, unlike the ones on the value added tax, set a definite and general regime on holding, circulation and control of products submitted to excise duties. The principle taken into account in determining the excise duties is the taxation at the destination, i.e. in the country where these are consumed. It must be mentioned the fact that at the level of the European Union, the regulations have a common regime for a series of products (harmonized excise duties), but there is a series of products submitted to the excises, specific to the wishes of each member state.

The products submitted to the communitarian regulations with regard to excise duties are:

- mineral oils and energetic products;
- alcohol and alcohol products;
- tobacco and tobacco products.

The applicable regime of these products entered into force after 1<sup>st</sup> of January 1993 and is part of the global harmonization strategy of the indirect taxes. The products submitted to the communitarian regulations may circulate in an excisable regime without control between member states, being taxed in the state where these are consumed.

The common regulations suppose the establishment of a minimum excise duty on each category of products. The minimum excise duty, first entered into force in the year 1992 for alcohol and booze, cigarettes and tobacco. It was also pursued the creation of a

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<sup>14</sup> COM(2003)614 – The balance of the achievements in VAT area.

<sup>15</sup> The Council regulation no. 1798/2003.

<sup>16</sup> Directive 92/12/EEC regarding the general regime, of holding, circulation and control of the goods submitted to excise duties, with the subsequent alterations and completions.



common base with respect to taxation. Thus, at communitarian level, the payability of these products submitted to excise duties is submitted to the following rules: *the products put in the consumption of a member state and held by the last trader in another member state, are submitted to excise duties in the state where these are held; the products purchased by physical persons for their own needs and transported in other member states, are submitted to excise duties in the state where these were purchased; the products purchased by people who do not have the quality of agreeable warehouse keeper and which are transported for sale or for their own consumption are submitted to excise duties in the destination state member.*

At the legislation level, each state can establish the framework background for manufacturing, transforming or holding products submitted to amortized excise duties, on the condition of observing the communitarian provisions.

## **2. Direct taxes**

The treaty for constituting the European community doesn't have explicit provisions regarding the harmonization in the area of direct taxation<sup>17</sup>. This is explained by the fact that mainly it is not needed to harmonize the direct taxation, this being strictly applicable inside each member state. Thus, most of the provisions regarding the direct taxation are entirely left at the latitude of member states, being an attribute of their sovereignty.

In certain cases there is the possibility that direct taxation affects the four fundamental freedoms needed for creating and maintaining the European Union: free movement of goods, persons, services and capitals. This is why it is necessary for the direct taxation to observe the assurance of these goods, too.

### **2.1. Taxation of the legal persons**

At the level of the European Union, for the harmonization of the direct taxes, the following were pursued: creation of a common taxation system applicable to suppliers, splits, assignment of assets, shares exchanges between the companies belonging to the different member states of EU; creation of a common taxation system of the profits between subsidiaries and parent company; creation of a common taxation system applicable to the payment of interests and dividends between the affiliated persons.

The first directive in the area of direct taxation was the „Directive no. 90/434/EEC regarding a common taxation system applicable to suppliers, splits, assignments of assets, shares exchanges between the companies belonging to the different member states of EU”, known under the name of “Mergers Directive”.

In the preamble of the Directive it is justified the need to adopt it by the wish to ensure a reasonable imposition of the merger, split, asset assignment and shares transfer operations, no matter these operations take place in one member state, or between two member states.

According to the abovementioned provision, a merger or a split will not determine the taxation of the contribution of capital calculated as the difference between the actual value of the elements of assets and liabilities and their tax value<sup>18</sup>.

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<sup>17</sup> See art. 93 of the Treaty for constituting the European Community.

<sup>18</sup> By *tax value* one understands the value based on which the profit or loss was calculated for establishing the income tax, profits or contributions of the capital of the assignor company, if these assets would have been sold the moment of merger or split but independently of it.

In Romania, the provisions regarding the mergers were implemented by means of the Law no.571/2003, art. 27 „Reorganizations, settlements and other transfers of assets and investments”.

The second directive in the area of direct taxation was „Council Directive 90/435/EEC regarding a common taxation system applicable to parent companies<sup>19</sup> and subsidiaries”. Known under the name of „Directive regarding the subsidiaries”, it suffered one alteration, in the year 2003. It applies in each member state in case of distribution of profits received by the companies in the respective state, from their subsidiaries in other member states, as well as the distribution of profits by the companies from the respective state to companies from other member states, for which these are subsidiaries.

This directive does not prevent the application of the internal dispositions or the ones based on agreements needed for the prevention of fraud or abuse, the purpose being to completely eliminate the double imposition in case of the distribution of profits from a subsidiary to the apparent company. Thus, when a subsidiary distributes profits to the parent-company, otherwise than on the occasion of its liquidation, the state where the parent company exists doesn't tax these profits, or taxes them authorizing at the same time the parent-company to proceed to deduction of the tax owed, that fraction of the company tax paid by subsidiary. Also, the profits distributed by subsidiaries to the mother company are tax-exempt with pay-as-you-earn tax<sup>20</sup>, and the state to which the parent company belongs can't levy pay-as-you-earn taxes for the profits received from subsidiary.

On June, 3<sup>rd</sup> 2003, a new directive was adopted in the area of direct taxation, respectively Directive 2003/49/EC, respectively a common taxation system applicable to the interest payment and dividends belonging to some different member states. The purpose of this directive is to ensure that the interests and the royalties paid between the affiliated companies are levied once in a member state, the basic idea being to eliminate the pay-as-you-earn of the interests and royalties payments between the affiliated companies.

With respect to Romania, according to the Complementary Document of Position III on the Government meeting from 4<sup>th</sup> of March 2004, it was requested a transition period of 4 years from the moment of European Union adhesion, respectively until 31.12.2010 for applying the provisions of this Directive.

## **2.2. Taxation of the physical persons**

With respect to the taxation of the physical persons, the harmonization at the level of the European Union pursues two categories of incomes: interest incomes obtained from abroad and the incomes from dividends.

In the area of physical person taxation the only adopted directive referred to interest incomes taxation<sup>21</sup>, its purpose being to avoid their double taxation. This provision proposes to ensure the taxation of the interest incomes paid by a payer from a member state to an individual beneficiary from another member state according to the

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<sup>19</sup> The statute of “parent company” is assigned to any company from a member state which owns 20% from the capital of a company from another member state.

<sup>20</sup> Is the word of another excise than tax on profit.

<sup>21</sup> Council Directive 2003/48/EC on taxation of savings income in the form of interest payments.

legislation of the last member state. In order to achieve the objective, the member will use an automatic system for exchanging the information.

With respect to the taxation of the dividends, there isn't yet a European Union regulation, but this a field where actions should be taken as soon as possible in the next years.

The main taxation systems of the dividends in EU member states are: the classic system; the separate systems (unique quota, with payment in installments, for half of the income); the chargeable system; as well as the exemption system.

*The classic system* supposes the profit taxation at the level of the company and the taxation of the distributed dividend at the level of the physical person (the dividend, globalizes with the other incomes of the physical person in view of taxation). Thus, one reaches a double economic taxation.

*The separated system* supposes the profit taxation at the company level and the dividend taxation at the level of the physical person (the dividend is levied separately from the other incomes achieved by the Physical person).

*The chargeable system* is base don an approach of the type destination, were the company s considered the destination, and the profit taxation is an advance payment for the shareholders' dividends. Thus, the profit of the company is levied according to the general rules. In this case the dividends taxation goes through the following steps: *I.* the calculation of the taxable income adding to the sum of dividends the sum of the paid profit tax; *II.* application of the income taxation quota for determining the dividend tax; *III.* granting a fiscal credit in amount of up to 100% from the paid profit tax.

When the granted credit covers integrally the sum of the paid profit tax, this system guarantees avoiding the double taxation and fiscal neutrality for all the shareholders no matter the level of the received dividends.

*The exemption system* supposes to levy only the profit, the dividends being exempted from taxation.

Using these taxation systems of the dividends leads to an inequity at the level of the Union with respect to dividend taxation, breaching the conditions imposed in the Maastricht Treaty with respect to the capital movement: "all the restrictions concerning the capital movement between member states and between member states and third party states will be forbidden"<sup>22</sup>. Thus it becomes imperious to establish a harmonized taxation system of the dividends.

### **3. Conclusions**

A system, regardless of its type, implies an aggregate of elements having certain common features that form an organized whole. From this point of view, we may conclude that the European fiscal system is still in the embryonary phase.

We may notice significant steps taken in view of strengthening the fiscal system of indirect taxes; however, as for direct taxation, the things are not yet clearly stipulated. Actually, the first measures of legislative harmonization in the field of direct taxation entered in force in the year 1990<sup>23</sup> indicating that the stipulations related to direct taxation are just beginning to take shape.

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<sup>22</sup> Art. 56 Maastricht Treaty's.

<sup>23</sup> See Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, and

The lack of a unitary legislative framework at the level of indirect taxes makes possible (which, in fact, is not at all desired by the European Union) affecting the four main types of freedom necessary in creating and maintaining the European Union, respectively: freedom of movement of goods, people, services and capitals. That is why it is required that direct taxation should ensure these types of freedom.

Thus, as far as we are concerned, we deem it imperatively necessary to outdo any barrier imposed by culture, tradition and operation typology to direct taxes and achieving a European common framework in this extremely sensitive field too. It is only in this manner that we could attain, in reasonable time, the longed-for European cohesion.

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Directive 90/434/EEC of 23 July 1990 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different member states.